

FIRST DISTRICT COURT OF APPEAL  
STATE OF FLORIDA

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No. 1D20-1213

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BOYLESTON REALTY AND  
AUCTION, LLC, a Florida limited  
liability company,

Appellant,

v.

ROBERT O. BEASLEY, as Personal  
Representative of The Estate of  
Donald W. Moore,

Appellee.

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On appeal from the Circuit Court for Escambia County.  
Gary L. Bergosh, Judge.

March 31, 2021

OSTERHAUS, J.

This case involves a dispute over the terms of an estate auction contract. Boyleston Realty and Auction, LLC argues that it could acceptably collect and keep a 15% buyer premium at an estate auction, while Robert O. Beasley, the personal representative of the relevant estate, contends that Boyleston breached the parties' auction contract by charging this premium for itself. The trial court entered final summary judgment in Beasley's favor. Boyleston appealed. We affirm.

## I.

Beasley contracted with Boyleston to auction certain assets of the Estate of Donald W. Moore. The parties' contract provided that Beasley would pay Boyleston a commission of "15% of the gross proceeds of sale." After the auction started, Beasley discovered that Boyleston was charging buyers a 15% buyer premium that wasn't mentioned in the contract. If a winning bid was \$100, for example, the buyer was charged \$115. Beasley confronted Boyleston about the premium, and the parties agreed to disagree for the time being about whether the contract allowed Boyleston to charge it and keep it. After the auction finished, the proceeds were placed in escrow pending the resolution of the dispute about the buyer premium.

Beasley sued Boyleston for breach of contract seeking to recover the 15% buyer's fee. Both parties moved for summary judgment. Beasley argued that, by charging a 15% buyer premium, Boyleston was claiming 30% of the gross proceeds instead of the 15% commission it had contracted for. Boyleston countered that charging and keeping a buyer premium did not breach the contract and was permissible in accordance with section 468.388, Florida Statutes.

## II.

We review the trial court's ruling on a motion for summary judgment based upon the interpretation of a contract de novo. *Hoffman v. Progressive Express Ins. Co.*, 294 So. 3d 448, 451 (Fla. 1st DCA 2020) (citing *Chandler v. Geico Indem. Co.*, 78 So. 3d 1293, 1296 (Fla. 2011)).

Section 468.388(1) requires that prior to conducting an auction in Florida, an auction business must enter a written agreement with the owner of the property that is to be sold. Such an agreement must state: "The terms or conditions upon which the auctioneer or auction business will receive the property for sale and remit the sales proceeds to the owner." § 468.388(1)(c), Fla. Stat.

The agreement in this case included terms upon which the gross sales proceeds of the auction would be remitted. The parties' two-page personal property auction agreement provided that the Estate would pay Boyleston:

a commission in the amount of 15% of the gross proceeds of sale . . . deducted from [the Estate's] proceeds after auction is complete. . . . It is mutually agreed that [Boyleston] may deduct the commission at the rate set forth above from the gross proceeds of the auction prior to remitting the net proceeds of [the] auction to the [Estate].

The buyer-premium amounts fall under the terms “gross proceeds of sale” because they were part of the overall price collected from buyers who purchased items at the estate sale, and they were not separately addressed or allocated by the contract. *See* Gross, *Merriam-Webster Online Dictionary*, [www.merriam-webster.com/dictionary/gross](http://www.merriam-webster.com/dictionary/gross) (last visited Jan. 29, 2021) (“consisting of an overall total exclusive of deductions”); *see also* *Brooks v. Green*, 993 So. 2d 58, 61 (Fla. 1st DCA 2008) (“Contracts are to be construed in accordance with the plain meaning of the words contained therein.” (quoting *Barakat v. Broward Cty. Hous. Auth.*, 771 So. 2d 1193, 1195 (Fla. 4th DCA 2000))). “[W]here a contract is clear and unambiguous, the parties are bound by the plain terms of their agreement.” *Pack v. Wiechert*, 285 So. 3d 1031, 1033 (Fla. 1st DCA 2019) (first citing *Crawford v. Barker*, 64 So. 3d 1246, 1255 (Fla. 2011); then citing *Rosenthal v. Rosenthal*, 199 So. 3d 541, 542 (Fla. 1st DCA 2016)).

Boyleston argues that we should read § 468.388(6) as authorizing it to charge and keep the buyer premium all to itself. But § 468.388(6) only authorizes a buyer premium to be charged under certain conditions as follows:

If a buyer premium or any surcharge is a condition to sale at any auction, the amount of the premium or surcharge must be announced at the beginning of the auction and a written notice of this information must be conspicuously displayed or distributed to the public at the auction site.

§ 468.388(6), Fla. Stat. Section 468.388(6) doesn't mandate that buyer-premium proceeds go to the auction business, or exclusively to Boyleston here. In fact, the statute doesn't say anything about how buyer premium proceeds must be split. Conversely, the parties' contract did set forth explicitly how the gross proceeds of the sale were to be divided: Boyleston was authorized to deduct 15% "from the gross proceeds of the auction prior to remitting the net proceeds of the auction to the [Estate]."

Finally, we reject Boyleston's argument that Beasley's claim for damages was speculative. In his complaint, Beasley sought to recover the 15% buyer premium. The trial court simply awarded him the amount he would have received had the contract been performed: the gross sales proceeds less the 15% seller's commission. *See Capitol Envtl. Servs., Inc. v. Earth Tech., Inc.*, 25 So. 3d 593, 596 (Fla. 1st DCA 2009) ("[T]he injured party in a breach of contract action is entitled to recover monetary damages that will put it in the same position it would have been had the other party not breached the contract." (citing *Fla. E. Coast Ry. Co. v. Beaver St. Fisheries, Inc.*, 537 So. 2d 1065, 1068 (Fla. 1st DCA 1989))).

### III.

We AFFIRM the trial court's entry of final summary judgment.

ROWE and LONG, JJ., concur.

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***Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.***

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